

## Remarks

1. The Pending Claims.

Claims 101 – 111 are now pending in this application. Claims 1 – 100 have been canceled. Support for new claims 101 - 111 can be found, for example, in the original claims 58 – 60 and Examples 1 2, 4, 5, 7, 9 and 10; as well as throughout the specification. No new matter has been added.

2. The Rejection under 35 U.S.C. § 112, Second Paragraph.

Prior claims 58-60 and 100 were rejected under 35 U.S.C. § 112, second paragraph. These claims have now been canceled. Commenting on those claims, the Examiner states that the steps within them were not directed to a method of screening. According to the Examiner the steps were directed to formation of the cocrystal. Applicant expresses no comment on those prior claims. New independent claim 101 and dependent claims 102 – 111 are directed to a methods "of screening for a cocrystal of a hydrochloric acid salt of an active agent." The final step in the claimed method recites "determining whether a cocrystal of the hydrochloric acid salt of the active agent and the carboxylic acid has formed." New claims 101 - 111 particularly points out and distinctly claims Applicant's invention satisfying the requirements of § 112, second paragraph.

3. The Rejection under 35 U.S.C. § 102(b).

Prior claims 58-60 were rejected under 35 U.S.C. § 102(a) as being anticipated by Homeyer et al., U.S. Patent 2,665,277. Prior claims 58-60 have been canceled rendering this rejection moot. As the Examiner points out, Homeyer et al. describes a method of making morphine phosphate hemihydrate. In contrast, claim 101 and its dependent recites a method of screening for a cocrystal of a hydrochloric acid salt of an active agent, or an "active agent chloride" where chloride is the anion, not phosphate. Homeyer et al. neither teaches or suggests the invention of claim 101. Further, the morphine phosphate hemihydrate lacks the 4 carbon or greater carboxylic acid limitation of the invention of claim 101.

4. Conclusion.

Applicant respectfully requests reconsideration of this application in view of the above amendments and remarks.

**Except** for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 19-2380. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,

**NIXON PEABODY LLP**

/Jeffrey A. Lindeman, Reg. No. 34,658/  
Jeffrey A. Lindeman  
Reg. No. 34,658

Dated: March 13, 2008

**Customer No. 022204**  
**NIXON PEABODY LLP**  
Suite 900  
901 9<sup>th</sup> St., N.W.  
Washington, DC 20004  
202.585.8000